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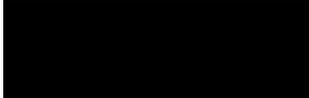
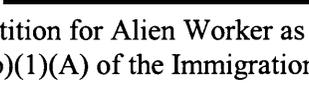
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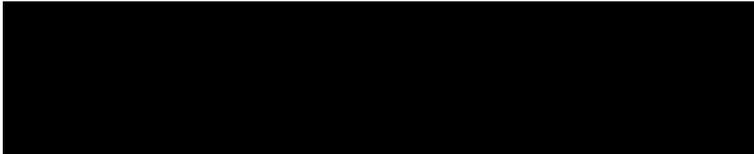
MAY 20 2005

FILE: EAC 02 223 50533 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner:   
Beneficiary: 

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*Mari Johnson*

*Robert P. Wiemann*, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in business. The director determined that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The applicable regulation defines the statutory term "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.*

In this case, the petitioner seeks classification as an alien with extraordinary ability in business, specifically in the field of global financial reporting and analysis. The petitioner originally submitted evidence including his resume, copies of his diplomas and accounting certificates, six recommendation letters, copies of his business presentations for various employers, documents relating to his membership in professional associations, a statement of intent, and a copy of the 2001 annual report for his current employer [REDACTED]. In response to a Request for Evidence (RFE), the petitioner submitted three additional recommendation letters. The director determined that although the record indicated that the petitioner had made valuable contributions to the companies where he was employed, the evidence was insufficient to establish that he was an alien with extraordinary ability. On appeal, counsel submits a brief but no additional evidence. Counsel's claims do not overcome the substantive reasons for denial and we affirm the director's decision. The evidence submitted,

counsel's contentions and the director's decision are addressed in the following discussion of the regulatory criteria relevant to the petitioner's case.

*(i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

The petitioner initially submitted no evidence relevant to this criterion. In his RFE response, the petitioner claimed eligibility under this category by virtue of his certification as a Chartered Financial Analyst (CFA). This designation was awarded to the petitioner in September 2003, over a year after his petition was filed and consequently cannot be considered. The petitioner must establish his eligibility at the time of filing. *See* 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). No other evidence in the record is relevant to this category and the director correctly determined that the petitioner did not meet this criterion. Counsel does not contest that conclusion on appeal.

*(ii) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

The director correctly determined that the petitioner did not meet this criterion. The petitioner submitted evidence of his membership in six associations. At the time of filing, the petitioner was an affiliate member of the Association for Investment Management and Research (AIMR). According to a printout from AIMR's website (submitted as Exhibit 6 in the petitioner's RFE response), affiliate membership requires only the member's adherence to the "Member's Agreement and Professional Conduct Statement" and fulfillment of society requirements for affiliate membership. These requirements appear to be readily achieved and are not outstanding achievements. Although the document states that affiliate membership requirements vary by society and chapter, the petitioner provides no evidence of the particular requirements of his society and chapter. As stated above under the first criterion, we cannot consider the petitioner's later obtainment of CFA charterholder membership in AIMR because it was obtained after the petition was filed. The petitioner must establish his eligibility at the time of filing. *See* 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. at 49.

The petitioner is an associate member of the American Institute of Certified Public Accountants (AICPA). According to a printout from the AICPA website (submitted as Exhibit 5 in the petitioner's RFE response), associate AICPA membership is for individuals who have passed the uniform CPA examination, but have not yet met the state's additional requirements for certification or licensure. AICPA associate membership requires only agreement to abide by the organizations bylaws and code of professional conduct and "meet the applicable CPE and Quality Review membership requirements" for the membership category. The petitioner provides no evidence of the requirements for his category of financial or accounting management. Accordingly, the evidence is insufficient to show that AICPA associate membership requires outstanding achievements as specified by the regulation.

The petitioner is also an affiliate member of the New York Society of Security Analysts (NYSSA). As evidence of the NYSSA membership requirements, the petitioner submits an incomplete printout from the NYSSA website. Affiliate NYSSA membership requires sponsorship by two Regular NYSSA members and regular employment "in an acceptable professional position for year [sic] and be enrolled in the CFA program." Alternatively, an individual may qualify for affiliate membership through additional years of work experience in a professional position or in conjunction with investment decision-makers. Affiliate NYSSA membership thus

requires only work experience in the field and sponsorship by regular members. These requirements are not outstanding achievements. In her RFE response cover letter, counsel states that the petitioner is also a member of three NYSSA committees, but the record contains no evidence of the petitioner's committee memberships or that such memberships are granted by virtue of outstanding achievements and not, for example, by voluntary service.

The petitioner's final three memberships are also insufficient to meet this criterion. The petitioner is a member of the Institute of Chartered Accountants of India (ICAI). At the time the petitioner was admitted, ICAI membership was open to individuals who had passed "the final C.A. Examinations Both Groups" and completed "3 years articulated/ 4 years audit training." These are requirements for certification and work experience, not outstanding achievements. Similarly, to become a member of The Institute of Company Secretaries of India, the petitioner simply had to pass an examination and complete training. The New York Academy of Sciences only required the petitioner to have an interest "in science, mathematics, and engineering, in the roles of science and technology in society, and in the objectives of the Academy." The record is thus insufficient to show that that these associations require outstanding achievements as a prerequisite to membership.

In his RFE response, the petitioner also included verification of his membership in the United Kingdom Society of Investment Professionals (UKSIP), a letter requesting his inclusion in the 2004 edition of Who's Who in America and documentation of his actual inclusion in the 2005-2006 edition of the National Register's Who's Who in Executives and Professionals. All of this evidence all arose after the petition was filed and consequently cannot be considered. The petitioner must establish his eligibility at the time of filing. See 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. at 49.

*(iii) Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

Counsel claimed that the petitioner's appraisal and research reports were "extremely important professional writings" that met this criterion, but the director correctly concluded that none of the reports were about the petitioner as required by the regulation. Counsel does not contest that determination on appeal. In fact, the only evidence relevant to this category is a short newspaper article published in 1995 in India. The article is entitled [REDACTED] "performed well in CA exam" and notes that the petitioner "excellently performed in May 1995 exams of CA (Final) conducted by ICAI." This article simply reports the petitioner's successful entry into his field in India and is not related to the petitioner's work as an established financial professional. The record also does not establish that the article was published in a major newspaper or trade publication.

*(iv) Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.*

Several of the petitioner's support letters state that he has judged the work of fellow or prospective employees of the various companies for which he has worked. The director correctly stated that this evidence was insufficient to establish the petitioner's eligibility under this criterion because the judging was merely required by the duties of his positions. On appeal, counsel claims that USCIS is discounting job-related achievements. Counsel misunderstands the regulatory requirements. The weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3) must depend on the extent to which the evidence demonstrates, contributes to, or is consistent with sustained national or international acclaim at the very top of the alien's field. Duties or activities

which nominally fall under a given regulatory criterion do not demonstrate national or international acclaim if they are inherent or routine to the alien's occupation. The petitioner's support letters state that he has "judged" the work of others by evaluating other employees, mentoring new staff and interviewing prospective employees. These tasks are inherent to supervisory or management-level positions. The record contains no evidence that the petitioner's "judgments" were anything more than satisfactory completion of responsibilities inherent to his positions.

On appeal, counsel claims that the petitioner has been solicited to provide guidance to "members of distinguished organizations" as an expert in his field. The record contains no corroborative evidence of this assertion. Without documentary evidence to support a claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Even if fully documented, such guidance would not necessarily satisfy this criterion. Solicitation of advice by others in one's field may signify expertise, but does not necessarily indicate sustained national or international acclaim.

*(v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.*

In relation to this criterion, the petitioner submitted nine recommendation letters written by professionals in his field or related specialties that praise the petitioner for his expertise and describe various projects that he has worked on for five companies in India and the United States. The director first noted that most of the letters were apparently written by individuals who had worked directly with the petitioner. On appeal, counsel contends that the director has discredited some of the letters simply because they were written by individuals who have worked with the petitioner. Counsel misconstrues the issue. While recommendation letters written by an alien's colleagues provide relevant information about the alien's experience and accomplishments, they cannot by themselves establish the alien's eligibility under this criterion because they do not demonstrate that his work is of major significance in his field beyond the limited number of professionals with whom he has worked directly. Moreover, recommendation letters solicited by an alien in support of an immigration petition carry less weight than preexisting, independent evidence of major contributions that one would expect of an individual who has garnered sustained national or international acclaim.

In this case, many of the letters carry even less probative value because they follow a similar format, repeat certain phrases and describe the petitioner's individual work projects at such length and in such exhaustive detail that they could only result from the author either having worked with the petitioner on the projects or from having the descriptions supplied to them. Because some of the letters are written by purportedly "independent" experts and not the petitioner's colleagues, their shared attributes suggest that the language of the letters is not the authors' own and reduce their evidentiary weight. Counsel's contradictory claim regarding the petitioner's profession also detracts from the letters' credibility. In relation to the third and fifth criterion, counsel stresses the "highly confidential" nature of the petitioner's profession. It is difficult to accept this assertion when all of the petitioner's recommendation letters are written by purported experts employed by other companies and yet they describe the petitioner's internal work projects in exhaustive detail. For example, [REDACTED] senior associate at Pricewaterhouse Coopers in New York City, describes the petitioner's "leading role in the quarterly Capital Planning process at Goldman Sachs" by listing the specific contents of the petitioner's "detailed analysis package."

The director also determined that the petitioner did not meet this criterion because the letters did not establish

that his “accomplishments have been recognized as having advanced the field to a greater degree than others involved in similar pursuits by members of the greater financial community.” On appeal, counsel contends that the petitioner “should not be penalized because of speculation about what others may or may not have done.” Again, counsel misconstrues the issue. Evidence submitted to meet this criterion must demonstrate not merely that the petitioner’s contributions have been valued by his employers, but that they constitute original, major contributions that have been recognized in the field at large and thus reflect sustained national or international acclaim. In this case, the record does not show that the petitioner’s work has risen to this level.

The letters all praise the petitioner as having “extraordinary abilities” in his field, but contain mostly lengthy descriptions of various projects on which the petitioner has worked. The letters explain why the petitioner’s work was valuable to his employers, but do not show that his accomplishments constitute original contributions of major significance to the field of global financial reporting and analysis. In fact, many of the petitioner’s projects are described as his assigned “tasks,” “duties,” or “responsibilities.” For example, [REDACTED] Crisp describes the petitioner’s work at his current employer, [REDACTED] and states that he “faces the challenging task of co-ordinating [sic] with various offices in different countries.” [REDACTED] states that the petitioner had “many highly significant duties” while employed at [REDACTED] in India and explains that he “was responsible [for] various assignments at any given point of time.” [REDACTED] also reports that at [REDACTED] the petitioner was “tasked with the responsibility of developing a reporting mechanism” for the construction of a new office for the company in New Jersey.

The problem is not merely the terms used to describe the petitioner’s projects. Work assignments could very well constitute original contributions of major significance to a given field. The issue is that in this case none of the letters establish that any of the petitioner’s projects rose to this level. Two letters make unsubstantiated claims that the petitioner has made original and major contributions to his field, but the record is devoid of any independent evidence to corroborate these claims. [REDACTED] describes the petitioner’s work while employed at [REDACTED] in India in helping a carpet manufacturing client go public. [REDACTED] claims that the petitioner’s successful completion of this assignment “in essence, paved the way for opening the capital markets to the carpet industry in India,” yet he provides no examples of other carpet manufactures that went public because they were encouraged by the petitioner’s work. The petitioner provides no other evidence to support this claim. [REDACTED] states that the “Automated Work-Paper model” that the petitioner developed while employed at MSL Business Solutions Incorporated in New York “established a trend for other accounting firms to have audit work papers customized for specific industries.” Yet [REDACTED] gives no examples of specific accounting firms that were thus influenced by the petitioner’s work and the record contains no other evidence to support this claim.

We note that the letter of Gregory Olear is particularly troubling. The last sentence of a paragraph discussing the significance of the Chartered Financial Analyst (CFA) designation is covered with correction fluid, but is still visible and states: [REDACTED] you may want to add something on how competitive these exams are, how many people are accepted each year, etc.” This statement suggests that the letter was not originally written by [REDACTED] and greatly diminishes its evidentiary value.

In sum, the recommendation letters describe examples of the petitioner’s work for various employers in great detail. They explain why the work was valued by the petitioner’s employers, but do not establish that the petitioner’s contributions had any impact on his field at large. Consequently, the petitioner does not meet this criterion.

*(vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.*

The director correctly determined that the petitioner did not meet this criterion. Counsel requested that nine of the petitioner's work presentations be accepted as comparable evidence pursuant to 8 C.F.R. § 204.5(h)(4). Counsel appears to have confused this criterion with the third criterion (published material about the alien). Attempting to invoke the comparable evidence standard, counsel claims that this criterion does not readily apply to the petitioner's field because financial analysts are rarely profiled in the media, "as their business and advisory work and achievements are necessarily confidential and therefore not amenable to being written about in other media." On appeal, counsel does not clarify why the comparable evidence standard should be invoked to consider the petitioner's work presentations. The regulation allows consideration of comparable evidence only when a listed criterion does not readily apply to the alien's field of endeavor. Scholarly journals and major trade publications do exist in the field of financial analysis, as evidenced by Exhibit 29 in the petitioner's RFE response (an excerpt from *CFA Magazine* which cites other publications in this field). We cannot accept counsel's unsupported assertion that this criterion does not readily apply to the petitioner's field, especially when the record contains evidence to the contrary.

Even if we accepted the petitioner's presentations as comparable evidence, we would find them insufficient to establish the petitioner's eligibility. Counsel contends that the petitioner's work "was much more influential than the average scholarly article, since it was actually used by industry-leading professionals ... as the basis for investment decisions." This claim is unsupported by the record. There is no evidence that the petitioner's presentations influenced "industry-leading professionals" outside of his employers or were in any other way indicative of sustained national or international acclaim.

*(vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.*

The director correctly determined that the petitioner did not meet this criterion. On appeal, counsel again attempts to invoke the comparable evidence standard and claims that the petitioner should be credited for his internal reports and presentations for various employers. However, the regulation clearly states that comparable evidence will be accepted when the other regulatory criteria do not readily apply to the alien's field. As the record in this case shows, at least six of the criteria readily apply to the petitioner's field. Counsel's attempt to invoke the comparable evidence standard for the petitioner's internal work presentations suggests that the petitioner is unable to meet other criteria that more readily apply to his profession.

*(viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.*

The petitioner's support letters discuss his accomplishments at his present and former employers. The director found the evidence indicated that the petitioner had made valuable contributions to the companies where he had worked, but that the record was insufficient to meet this criterion because "the same could be said about any number of individuals employed in the [petitioner's] field." Counsel contends that the petitioner's "achievements should not be diminished just because some undocumented number of others may or may not have contributed to their employer's businesses." Although not well articulated, the director's decision was correct and counsel's contention does not overcome the insufficiency of the evidence.

In order to satisfy this criterion, a petitioner must establish the nature of the alien's role within the entire organization or establishment and the reputation of the organization or establishment. Where an alien has a leading or critical role for a section of a distinguished organization or establishment, the petitioner must establish the reputation of that section independent of the organization itself. The petitioner's support letters describe his "leading" or "crucial" role in various projects for his current and former employers, but do not establish that he has ever performed a leading or critical role for any of the companies as a whole. For example, [REDACTED] states that the petitioner made "critical contributions in his work for First National India Limited (FNIL)," but the petitioner's resume lists his position at FNIL as "management trainee." The record contains no documentation from any of the petitioner's employers describing the petitioner's exact position or substantive role in their companies or any of their components. While it is true, as counsel states on appeal, that there is no requirement that the alien be the only person in his field to play a critical role for the employer, we cannot adequately assess the evidence with no information regarding the petitioner's exact role and the size and organizational structure of his employers. Petitioner submitted an organizational chart for his current employer, [REDACTED] but counsel states that the chart describes the petitioner's current office in London, not the New York office where he was stationed when his petition was filed. Moreover, the record contains insufficient evidence of the reputation of the petitioner's employers. Besides [REDACTED] none of the recommendation letters discuss the reputation of any of the petitioner's former employers in India and the United States.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her field. The petitioner bears this substantial burden of proof. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner in this case has not sustained that burden. The evidence indicates that the petitioner is a skilled and well-respected financial analyst, but the record does not establish that he was an alien of extraordinary ability at the time of filing. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.